

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

WHITESTONE FARMS, L.L.P.

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AFO- 21

TO: National Registered Agents, Inc.
Whitestone Farms, L.L.P., Reg. Agent
604 Locust Street, Ste 222
Des Moines, IA 50309

Whitestone Farms, L.L.P.
Attn: Greg Fontaine, CEO
11975 Portland Ave., South, STE 110
Burnsville, MN 55337

High Ridge Partners
Michael Eber, Receiver
140 South Dearborn, Suite 420
Chicago, IL 60603

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Whitestone Farms, L.L.P. (Whitestone) for the purpose of resolving the issues surrounding manure discharges and control violations at several Whitestone owned facilities in Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Alison Manz, Field Office #4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Jeff Theobald, Field Office #5
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309-4611
Phone: 515/725/0268

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

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II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Whitestone is a limited liability partnership that owned several swine facilities located throughout Iowa. Ten of these facilities will be referenced in this administrative consent order that deal with different stages of Whitestone's operation. Since the time of the violations, the DNR has been advised that all Whitestone facilities in the state have been sold or are in the process of being sold. On January 23, 2008, Whitestone entered into receivership, with ~~High Ridge Partners~~ being appointed as the receiver of Whitestone. The receiver is authorized to utilize and operate the assets and property held by Whitestone.

~~MICHAEL J. EBER~~

PAST HISTORY FOR FACILITIES IN FIELD OFFICE 4 REGION:

2. On May 17, 2004 and October 27, 2004, Whitestone reported manure spills at its Taylor County facility. On November 8, 2004, Whitestone reported a manure spill at its Union County Facility. All of these spills were reported within the 6 hour reporting requirement.

3. On March 15, 2007, Whitestone reported a manure spill at its Ringgold County facility. It was reported within 1 hour after its discovery. DNR conducted an investigation and on March 23, 2007, sent a written spill report to Whitestone.

4. On April 3, 2007, DNR sent Whitestone a letter requiring it to submit a plan of action to ensure that future releases do not occur. On April 12, 2007, DNR received a letter from Whitestone detailing a plan of action to prevent future manure spills.

5. On April 16, 2007, Whitestone reported a manure spill at its Ringgold County facility. The spill was reported approximately 5.5 hours after it was discovered.

CURRENT VIOLATIONS FOR FACILITIES IN FIELD OFFICE 4 REGION:

6. On Friday, June 22, 2007, Whitestone left an after-hours message at 4:50 p.m. on the DNR Field Office 4 answer machine regarding a manure release at its Sharpsburg 14 facility (Section 31, T69N, R33W, Taylor County, Iowa). The Field Office 4 answering machine instructs the caller to contact the 24 hour spill line in case of a release and gives the necessary phone number.

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7. On June 25, 2007, DNR Field Office 4 received the message left by Whitestone on June 22, 2007. DNR personnel immediately began an investigation. During this investigation, DNR discovered that the manure release had initially been found by Whitestone on June 20, 2007, two days before it was reported and five days before DNR was able to respond.

8. On July 11, 2007, DNR sent Whitestone a Notice of Violation letter for failing to report the manure release and failing to maintain minimum manure controls.

9. On July 13, 2007, DNR Field Office 4, received a complaint alleging that there had been manure releases at several Whitestone facilities in the area. It alleged that manure pits were near overflow level and that Whitestone was managing the manure by pumping it from building to building instead of using proper application techniques. The complaint also alleged that several dead animals were laying around on some of the sites.

10. On July 17, 2007 and July 18, 2007, DNR Field Office 4 personnel conducted investigations at 9 different Whitestone sites located in the Field Office 4 area. During these investigations several manure releases were observed.

- Faris Finisher Facility (Section 12, Middlefork Township, Ringgold County): A four building site with an outdoor concrete manure control structure. DNR personnel found evidence of a previous manure release. This release was not reported.
- Stateline Farm Facility (Section 26 & 27, Middlefork Township, Ringgold County): A nursery and sow site consisting of a semi-covered concrete manure structure designed to flow into a two-stage anaerobic lagoon facility. DNR personnel found evidence of several different manure releases at the nursery part of the facility. The releases were never reported to DNR by Whitestone. Additionally, less than four inches of freeboard were available in the concrete structure.
- Thayer Farm Sow #1 (Section 23, Pleasant Township, Union County): A four building site with two outdoor concrete manure control structures. There was not evidence of a manure release at this site; however, numerous forms of solid waste were floating in the manure control structure. Only 18 inches of freeboard were visible.
- Sharpsburg #18 (Section 4, Holt Township, Taylor County): A four building site with below ground pits. DNR personnel found evidence of a manure spill and improper disposal of dead animals at this site.
- Sharpsburg #17 (Section 12, Marshall Township, Taylor County): A four building site with below building pits. There were no violations found at this site. No evidence of a manure release was found and adequate manure controls were in place.
- Sharpsburg #16 (Section 21, Marshall Township, Taylor County): A four building facility with below building pits. DNR personnel observed evidence of a recent manure spill at this site. Also, during the investigation, DNR personnel observed manure overflowing from another pit fan in a different building. A manure applicator was on site during this investigation and reported that the manure had begun seeping through the pit fans the previous day (July 16, 2007).

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- Sharpsburg #15 (Section 23, Washington Township, Taylor County): A four building site with below building pits. DNR found no evidence of manure spills. The site had adequate manure storage.
- Sharpsburg #14 (Section 31, T69N, R33W, Taylor County): A four building site with below building pits. DNR personnel found evidence of recent manure releases at three of the four buildings on site. Manure had flowed more than 100 feet to the east of one of the buildings into a nearby bean field. Whitestone had taken action to try and contain the release; however, the spill was not reported to DNR.
- Sharpsburg #13 (Section 11, Marshall Township, Taylor County): A four building facility with below building pits. DNR personnel found completely full pumpouts with absolutely no free board visible. Evidence of recent manure releases were found, including evidence of manure reaching more than 100 feet west of the structure. The spill did not reach the nearby water source. It appeared that some of the lids on the storage tanks had been partially removed to allow for the structures to overflow more freely. These spills were not reported to DNR.

11. On August 22, 2007, Whitestone notified DNR Field Office 4 of a manure release at its Sharpsburg #13 site. The original report stated that the release had not reached the water source. However, when DNR inspectors arrived to investigate the release, they found that a large amount of manure had reached the nearby water source. Solids from the release were observed in the water and samples from the water source were retrieved and sent for testing. The sample results indicated the following:

Pollutant	Kjeldahl Nitrogen	Membrane Fecal Coliform	Membrane E. Coli NA + MUG	Total Suspended Solids	Total Volatile Suspended Solids	Ammonia as N	Total Biological Oxygen Demand
Concentration Downstream	1.2 mg/L	1300 mg/L	1300 mg/L	74 mg/L	16 mg/L	0.12 mg/L	>5
Concentration Upstream	3400 mg/L	10000 mg/L	9100 mg/L	22000 mg/L	17000 mg/L	2400 mg/L	4900 mg/L
Quantitation Limit	0.1 mg/L	10 mg/L	10 mg/L	1 mg/L	1 mg/L	.05 mg/L	2 mg/L

12. On September 13, 2007, a Notice of Violation letter was issued to Whitestone for the above violations.

CURRENT VIOLATIONS FOR FACILITIES IN FIELD OFFICE 5 REGION:

13. Whitestone's Davis Farm confinement facility is located in the SW ¼ of Section 5, Madison Township in Clarke County. The facility has a capacity for 3840 head of swine.

14. On June 26, 2007, DNR Field Office 5, received a complaint from the

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Clarke County Sheriff's Department regarding the Davis Farm facility. The complaint stated that the buildings on site were so full of manure that the pigs were walking around in it, and that a large number of dead pigs had been left on the property for an extended period of time. Jeff Theobald, DNR Field Office 5, reported the site conditions to Greg Kent, Clarke County Sanitarian, who visited the site. Mr. Kent reported that the conditions at the facility were poor and that he spoke with Adam Daugherty, site manager, and informed him that the manure control problems and improper disposal of dead animals needed to be addressed immediately.

15. On June 27, 2007, Bill Gibbons and Jeff Theobald, DNR Field Office 5, conducted an investigation of the Davis Farm facility. During the investigation they observed an estimated 20 to 30 dead pigs contained in an area made of 4 tin walls and a small cement pad. Some of the carcasses had been in this area for a substantial amount of time and had begun to decompose into a liquid form which was overflowing into the soil around this containment area.

16. Additionally, on June 27, 2007, Mr. Gibbons and Mr. Theobald inspected the 4 buildings located on the site:

- a. The southeast building was overflowing with manure. The manure was spilling out of the east end fan and was above the building slats. The spilled manure had traveled 10 to 20 feet from the building.
- b. The northeast building had manure coming out of the east end doorway. The building's end fan was not functioning. The manure was above the building slats and was close to overflowing.
- c. The southwest and northwest buildings were not overflowing; however, the manure was only slightly below the slats.

The Southwest Custom Company was on site attempting to land apply the manure from the 4 buildings, but was having difficulty finding enough land to apply all of the manure. DNR personnel inquired with Mr. Daugherty as to why the manure had not been land applied during the previous year. Mr. Daugherty stated that financial and weather issues had contributed to the inability to previously land apply the manure. He stated the buildings had been populated just over a month ago. DNR personnel explained to Mr. Daugherty that the dead animals needed to be disposed of immediately. They recommended that a rendering company be used for future dead animal disposal in order to remain in compliance with the 24 hour disposal requirements. DNR personnel also informed Mr. Daugherty that the manure release from the Southeast building would have to be scraped up and land applied.

17. On July 5, 2007, Mr. Gibbons observed a rendering truck picking up dead pigs from the Northeast building. The dead pigs were sitting on a concrete pad at the west end of the building and were highly decomposed. Material from the decomposition had run off the pad onto the ground. More dead pigs were sitting outside the Southeast building and were in different stages of decomposition. The rendering truck driver stated that he was supposed to pick up the hogs 2 days earlier, but was running behind schedule.

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18. On July 10, 2007, DNR Field Office 5, received a complaint regarding the odor coming from the Davis Farm facility and the rate at which manure was being land applied.

19. On July 11, 2007, Mr. Theobald returned to the Davis Farm facility to evaluate the site's progress. The applicator company was on sight and significant progress had been made at land applying the manure from two of the four buildings. Application of manure from the third and fourth building was scheduled for the next day. After all four building had been pumped out; the pumping records showed that 1,212,000 gallons of manure had been removed from the four buildings on site. A dead box contained six carcasses and was in place for the rendering company. The manure from the spill had been scraped and land applied.

20. On July 13, 2007, DNR Field Office 5 issued a Notice of Violation letter to Whitestone for improper animal disposal, failure to maintain sufficient capacity in the manure storage structures, and failure to report a hazardous condition.

IV. CONCLUSIONS OF LAW

1. 567 IAC 65.2(9)(a) provides that a person storing, handling, transporting or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the DNR of the occurrence of a release as soon as possible but not later than six hours after the onset or discovery of the release. During the June 27, 2007 investigation, DNR Field Office 5 found evidence of a manure release from the Davis Farm facility and the release had not been reported to the DNR. During the July 17, 2007 and July 18, 2007 investigations, DNR Field Office 4 found evidence of unreported manure releases at several of Whitestone's facilities and the releases had not been reported to the DNR. The above-facts disclose several violations of this provision.

2. 567 IAC 61.3(2)"b" provides general water quality criteria and states all surface waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. On August 22, 2007, manure runoff from the Whitestone Sharpsburg #13 facility flowed into an unnamed tributary of the One Hundred and Two River. The above-facts disclose a violation of this provision.

3. 567 IAC 61.3(2)"c" provides general water quality criteria and states all surface waters shall be free from substances attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. Manure runoff from the Whitestone Sharpsburg #13 facility flowed into an unnamed tributary of the One Hundred and Two River. The above-facts disclose a violation of this provision.

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4. 567 IAC 65.2(3) provides that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. During the June 27, 2007 investigation, DNR Field Office 5 found evidence of inadequate manure control which resulted in improper manure releases for the Whitestone facility. During the June 25, 2007, July 17, 2007, July 18, 2007, and August 22, 2007 investigations, DNR Field Office 4 personnel found evidence of inadequate manure control which resulted in improper manure releases at several Whitestone sites.

5. 567 IAC 65.2(3)(b) provides that manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or earthen waste slurry storage basins shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. DNR Field Office 4 found a lack of adequate visible freeboard in at least two of Whitestone's facilities during its July 17, 2007 and July 18, 2007 investigations.

6. 567 IAC 105.6(6) provides that dead farm animals shall be incorporated into the composting process within 24 hours of death. An adequate base layer (from 12 to 24 inches thick, depending on the size and number of dead farm animals) with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times to control mortality leachate and odors and to prevent access by scavenging domestic and wild animals. The 20-30 dead pigs found at Whitestone's Davis Farm facility were stored on a cement pad surrounded by four tin walls. Several of the pigs were in severe stages of decomposition indicating that many of the animals had been dead far beyond the 24 hour disposal requirement. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Whitestone agrees to do the following:

1. Whitestone shall submit a list of any facilities it owns or operates in the State of Iowa to DNR within 30 days of the date the Director signs this administrative consent order;
2. Within 60 days after the date the Director signs this administrative consent order, Whitestone shall submit a Plan of Action for any facilities it owns or operates in the State of Iowa to ensure that any manure releases are reported in a timely manner to DNR;
3. Within 60 days after the date the Director signs this administrative consent order, Whitestone shall submit a Plan of Action for any facilities it owns or operates in the

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State of Iowa to ensure that manure in below building pits and other control structures is pumped from and land-applied at a frequency to prevent overflow of manure;

4. Whitestone shall continue to report freeboard pit measurements for any facilities it owns or operates in the State of Iowa to DNR at the beginning of each month; and

5. Whitestone shall pay a penalty of \$5,000.00. The penalty shall be paid when the administrative consent order is signed by Whitestone.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure allowed Whitestone to save time and money. By failing to timely apply the manure at several of its facilities, Whitestone has gained an economic benefit of at least \$500.00. Therefore, \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Failure to report a manure spill threatens the integrity of the water quality program. Tax dollars were spent to investigate, document, and respond to these violations. Additionally, at the Sharpsburg 13 site, manure reached a water of the state and manure solids were observed in the water source. Manure spills can degrade water quality and contribute contaminants to both land and water resources. Based on the above considerations, \$3,000.00 is assessed for this factor.

Culpability – Whitestone has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Along with the current violations found during this investigation, evidence of previous unreported spills was found during this investigation. Whitestone has previously been informed of DNR's manure

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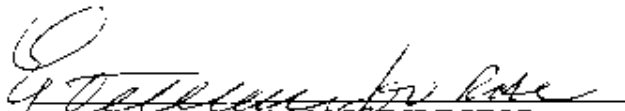
control and release reporting requirements. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Whitestone. For that reason, Whitestone waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 20 day of
June, 2008.

AS
RECEIVER  _____
For WHITESTONE FARMS, L.L.P.

Dated this 19 day of
JUNE, 2008.

Kelli Book; Field Office 4; Field Office 5; Gene Tinker; EPA; VIII.D.1.a, VIII.D.2.a,
VIII.D.2.d, VIII.D.3.a